IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 5233 of 2007(W)

OS.253/2005 of II ADDL.SUB COURT,KOZHIKODE

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PETITIONER:

K.P.PADMAVATHI, REP. BY
POWER OF ATTORNEY HOLDER, MRS. K.T.ANUPAMA,
RESIDING AT DOOR NO.3709B, NEAR DESAPOSHINI
COMMUNITY HALL, P.O.KUTHIRAVATTAM, NELLIKKODE,
KOZHIKODE TALUK.

BY ADV. SRI.T.A.RAMADASAN
SRI.K.PRAVEEN KUMAR

RESPONDENTS:

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1. C.V.VELAYUDHAN, S/O. KARUPPUNNI,
VILLA ESPANA, NEW NO.59, VELLACHERY MAIN ROAD,
CHENNAI-42.

2. C.V.RAJAN, S/O. KARUPPUNNI,
DAMAYANTHI NIVAS, PANNIYANKARA AMSOM, DESOM,
KOZHIKODE TALUK.

3. C.V.ASOKAN, S/O. KARUPPUNNI,
RESIDING AT -DO- -DO-

4. A.V.SULOCHANA, D/O. KARUPPUNNI,
"SUKRIPA", AZHINHILAM AMSOM, DESOM, ERNAD TALUK.

5. C.V.SURESH BABU, S/O. KARUPPUNNI,
DHAMAYANTHI NIVAS, PANNIYANKARA AMSOM DESOM,
KOZHIKODE TALUK.

6. C.V.DAMAYANTHI, W/O. KARUPPUNNI,
DHAMAYANTHI NIVAS, PANNIYANKARA AMSOM DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.P.S.MURALI
SRI.T.R.RAVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE I.A.2998/06 IN O.S.253/05 FILED BY THE 6TH RESPONDENT HEREIN DATED 14.7.06.

EXT.P2: COPY OF OBJECTION FILED BY THE PETITIONER DATED 18.8.06.

EXT.P3: COPY OF I.A.NO.2997/06 FILED BY THE 6TH RESPONDENT HEREIN DATED 14.7.06.

EXT.P4: COPY OF THE OBJECTION IN EXT.P3 PETITION FILED BY THE PETITIONER DATED 18.8.06.

EXT.P5: COPY OF THE COMMON ORDER HEREIN I.A.2997/06 IN O.S.253/05 OF THE SUB JUDGE, KOZHIKODE DATED 28.11.06.

EXT.P6: COPY OF STATEMENT RECORDED BY THE COMMISSIONER.

TRUE COPY

P.A.TO JUDGE

M.N.KRISHNAN,J

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W.P.(C).No.5233 of 2007

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Dated this the 14th day of June, 2007

JUDGMENT

This writ petition is filed seeking to quash the order I.A.No.2997/2006 and 2998/2006 in O.S.No.253/2005. The sixth defendant in the suit was set ex parte on 08.09.2005 in a suit for partition. She filed application for setting aside an ex parte order and to receive the written statement. When it came up for consideration, the plaintiff contended that the sixth defendant is a person who is unable to look after herself and there must be a guardian appointed. They challenge the mental capacity of the sixth defendant, to conduct the case. The court below had taken all the precautions to find out whether she will be able to defend the case for herself. The trial court has observed " though aged, she was found to be a person capable of understanding things in normal and proper way". Further she was examined on a commission and cross-examined. The court also found that her age and physical weakness are sufficient ground to condone the delay in setting aside the ex parte order and to accept the written statement as well. The plaintiff has instituted the suit

against sixth defendant in her individual capacity and when she enters appearance, wants to challenge contending that she is incapable to defend herself. The court though not strictly in the form of an order, under Order 32 Rule 15 had conducted an enquiry for itself to satisfy the mental condition of the person and was convinced about it and thereafter passed an order setting aside the ex parte order and receiving additional written statement. I find, the findings of the court below is right and does not call for any interference by this Court. Therefore, the writ petition is dismissed.

M.N.KRISHNAN,JUDGE

dvs